by a jury. And the same opinion was expressed by the Court in Clisdell v. Lovell, in the same year and volume, 15 O. L. R. 379, 10 O. W. R. 609, 925, in which again equitable issues were involved. All the Judges agreed that these ought not to be tried by a jury, but Mr. Justice Anglin guarded his judgment by saying that the striking out of a jury notice by a Judge in Chambers should be strictly confined to cases in which it was obvious that no Judge would try the issues with a jury. The qualification expressed by this Judge was acted upon by Mr. Justice Teetzel in Dyment v. Dyment, 13 O. W. R. 461 (February, 1909), who declined to act in Chambers, though, had he been trial Judge, he would have been inclined to dispense with a jury.

Next comes the case in appeal, decided by Mr. Justice Riddell, Stavert v. McNaught, 13 O. W. R. 921 (April, 1909). The case of Dyment v. Dyment does not seem to have been brought to the notice of Mr. Justice Riddell, and leave to appeal from his order has been given by Mr. Justice Teetzel, that there may be a settled practice (if that is possible,)

I favour the opinion expressed by Mr. Justice Anglin, though it may be perhaps a little too broad, rather than to do away with the right of trial by jury in proper cases by the intervention of a Judge in Chambers. The critical test in actions merely of common law character, and in which a jury would be the recognised forum, if sought by either party, as to the method of trial, should not be taken out of the hands of the trial Judge. The reasons given for letting that determination rest with him prevail, to my mind, over those of convenience and expedience which are sought to be applied peculiarly to actions tried at Toronto. The non-jury sittings are continuous throughout the year; so practically are jury sittings, if there is anything to be tried; and there is no reason why the trial Judge at the jury sittings, if he comes to a case which, after hearing the counsel, he is of opinion should be tried without a jury, should not transfer that case to the non-jury list, or, which would be better, exchange with the non-jury Judge for the purpose of that particular trial. That adjustment would work less harm than the interlocutory mode of taking away the right to a jury in a case which is prima facie of jury competence, and in which one of the litigants has claimed a jury.